



POLICE DEPARTMENT

March 15, 2021

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Rulx Noel :

Tax Registry No. 940116 :

Transit Division District 3 :

Case No.

2019-20143

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Josh Kleiman
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB:

Di'Indra Forgenie, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent:

John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATION

1. Police Officer Rulx Noel, on or about March 21, 2018, at approximately 1710 hours, while assigned to Transit District 13 and on duty, in the vicinity of 125th Street A-, C-, B-, D-line Subway Station, New York County, wrongfully used force, in that he pushed TE without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me remotely on February 2, 2021. Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. The CCRB presented no witnesses and rested on the stipulated documentary evidence. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty, and recommend a penalty of the forfeiture of ten (10) vacation days.

ANALYSIS

It is undisputed that on March 21, 2018, Respondent stopped two minor females, ZJ (age 14) and TE (age 16) upon suspicion that one of more of the members of a group they were traveling with had "doubled up" through a turnstile at the 125th Street Subway station entrance and, therefore, committed the crime of theft of services (*see* Penal Law § 165.15 [3]). Initially, instead of issuing a summons or processing a juvenile report, Respondent chose to deliver a verbal warning. One of the members of the group, ZJ, began cursing and yelling at him. Respondent then grabbed her by the arm and led her to the station's emergency exit gate adjacent to the turnstiles, pushing her out of it. TE followed behind, but as she crossed the threshold of the

gate to follow ZJ. Respondent placed his hand between her shoulder blades at the top of a red backpack she was wearing and delivered a slight push. The push caused TE to take an extra step, but she did not lose her balance or fall. Upon observing this, ZJ returned and again began berating Respondent. Respondent then made the decision to arrest ZJ. A bystander used her cellphone to partially record the incident, capturing the charged push. CCRB has charged Respondent with a single specification alleging that Respondent's push of TE constituted a wrongful use of force. It is not reasonably in dispute that Respondent pushed TE; rather, at issue is whether the push constituted excessive force.

Factual Record

CCRB did not produce any witnesses for testimony. Rather, on stipulation, CCRB admitted a seven-minute cellphone video clip (CCRB Ex. 2) and the audio (CCRB Ex. 1B) and corresponding transcript (CCRB Ex. 1A) of CCRB's interview of Person A a bystander who had used her cellphone camera to capture the submitted video clip. In her CCRB interview, Person A told investigators that she was ascending a set of stairs at the subway station when she observed Respondent and his partner in front of the turnstiles at an entrance to the station struggling to eject a young woman, later identified as ZJ. Almost immediately, and as one of the officers escorted ZJ to the exit gate, Person A activated her cellphone video camera. She stated she observed Respondent shove both girls through the exit. ZJ became upset, and the officers handcuffed her. A crowd began to gather and backup officers arrived. Ms. Person A counted 15 police officers on scene. Towards the end of the incident, Person A spoke to "two young people" who had watched the entire encounter, one of them, a "young man," told her that the encounter had started when "a boy" had scooted behind him as he was entering the

station to skip paying a fare, causing the officers to approach. (CCRB Ex. 1A, at 3, 7-10, 12, 17-18)

The seven-minute video clip recorded by **Person A** (CCRB Ex. 2) begins by displaying the exit gate of a subway station and depicts the following events:

- 00:01 – Respondent is seen standing behind ZJ, holding both of her arms. He pushes her out of an exit gate and releases her arms. ZJ takes a few steps away from Respondent and states, “Suck my dick, I hope your mother dies, bitch!” She then walks away.
- 00:03 – TE moves past Respondent to exit the station as well. As she is exiting, Respondent places his right hand between her shoulder blades at the top of a red backpack she is carrying on her back and extends his fingers, pushing her. She takes one, small step forward to cushion herself from the force of the push.
- 00:05 – ZJ immediately returns, placing herself within an inch of Respondent and proceeds to shout in his face, “Don’t touch my little sister,¹ I’ll fucking kill you, what the fuck is wrong with you?”
- 00:09 – Respondent grabs ZJ to restrain her. **Person A** is heard in the background repeatedly stating, “Keep it up officer!” TE stands in front of a male to prevent him from moving toward the officers.
- 00:16 – Respondent’s partner, Police Officer Romero, handcuffs ZJ. Ms. **Person A** continues to shout, “Keep it up officer!” and asks them for their names.
- 00:30 – TE is heard asking for a phone. TE approaches the officers. Respondent and his partner tell her to “back up.” She does not comply. TE then attempts to move around to the side of a gate ZJ is up against to speak with her. Respondent tells TE, “Listen, you do not touch her.” TE can be seen grabbing at ZJ, possibly looking for a cellphone.
- 00:37 – ZJ continues screaming at the officers with an explicative filled tirade. A crowd begins to form.
- 01:48 – TE can be heard telling ZJ, “Give me mom’s number.” ZJ then provides TE with a phone number.
- 02:30 – Another officer arrives on scene. **Person A** shouts, “Here comes the cavalry!”
- 02:40 – Respondent asks a male for ID, escorting him to the area where ZJ is handcuffed.

¹ Despite referring to her as “little sister,” CCRB clarified in its opening statement that TE and ZJ are “best friends.”

- 03:00 – A crowd has formed. Several additional officers are on scene. ZJ continues to scream and curse at the officers.
- 03:43 – ZJ is seen and heard speaking to someone on the phone and telling them to “Come down here.” TE then tells ZJ, “Mom says to shut up.” ZJ continues her verbal protestations.
- 04:35 – ZJ states to one of the officers, “I hope someone shoots you in your fucking head.” Person A tells her, “Ok, be quiet now,” repeatedly.
- 04:50 – Person A begins counting the number of the officers on scene for the camera, counting 15. She then shouts, “15 cops, 15 cops, for one little 13-year-old girl, that’s fucking amazing!”
- 05:20 – Person A begins naming the officers for the camera. She names Police Officers Romero, Noel, and Vicente, telling the camera that they “were the guys manhandling a couple of teenage kids just ‘cause they can. Yeah, get some video evidence!” Person A asks a plainclothes officer for his name; he answers “Damien.” She walks away and says, “Mine is Fuck You.”
- 06:10 – ZJ asks the officers to call for a female officer. She shouts, “I paid my fare!”
- 06:30 – Person A asks TE for her email address “so I can be a witness.” TE provides her phone number. Person A responds, “Thank you, good luck,” walking away and ending the video recording.

Respondent testified that on March 21, 2018, he was assigned to patrol the 125th Street A/C/E subway station with his partner, Police Officer Romero. At approximately 1710 hours, as he was standing in the vicinity of the turnstiles and exit gate at the corner of 127th Street and Seventh Avenue, he observed two minors going through the turnstiles together, thereby committing a theft of services crime. After a minute or less, Respondent approached them to ask why they did not pay the fare and to warn them that they could receive a summons if they were over 16 years old. Respondent explained to the Tribunal that if they were minors they could be taken into custody, whereupon a “juvenile file report” would be prepared and the minors’ parents would be called. (Tr. 15-21, 32, 92-93)

The group was disrespectful toward Respondent, refusing to listen and trying to pass by him. One of the members of the group, a female minor, ZJ, cursed and walked away from Respondent. Respondent then told all of the teenagers, including those who had paid their fare, that they would have to leave the station. ZJ responded, "Fuck no!" He grabbed ZJ's arm to escort her out, which took "about two minutes." ZJ began "fighting back" and "resisting," but Respondent was able to maintain control of her. Ultimately, he was able to push her out through the emergency gate, and did so because she was pushing back against him. Respondent acknowledged he might have pushed TE as well. ZJ and TE continued "fighting" and a crowd began to form, so Respondent and his partner called for backup. Respondent stated that ZJ was arrested for being "disrespectful and uncooperative" and, as he stated, "if I remember," TE was arrested for "disobeying a lawful order while ZJ was being, you know, put in handcuffs."² Respondent claimed that a "juvenile file report" was prepared³ for ZJ and a parent/guardian was contacted. While Respondent stated that he believed that a summons was issued to TE, he could not say with any degree of certainty if a summons was in fact prepared.⁴ Respondent stated that ZJ's aunt arrived to collect the minors. She told Respondent that ZJ "had an anger issue that they're dealing with." Prior to leaving, ZJ and TE apologized to Respondent and hugged him. (Tr. 21-23, 25-27, 29-33, 70, 93, 101-02)

On cross-examination, Respondent admitted that he did not feel unsafe stopping the group of teenagers and that none of them ran. He clarified that throughout the incident he was largely dealing with ZJ, who was flailing her arms and fighting, and that his partner handled the rest of the minors. He claimed that he did not recall pushing TE in the back and stated that he did

² While Respondent believed that TE was arrested, no evidence was presented to the Tribunal to corroborate that she was in fact arrested.

³ No arrest related paperwork or "juvenile file report" was presented to the Tribunal.

⁴ No evidence corroborating the issuance of a summons to TE was provided to the Tribunal.

not recall why he pushed TE. Following the parties questions, when asked again by the Tribunal if he knew why he had pushed the “second woman...with the red backpack” (TE), Respondent stated, “because when the whole incident start[ed] on the other side of the turnstile, and she got involved, and she was, you know, cursing as well. So, that was the second person that was involved into – into the melee and I think that’s the reason why.” When asked if he had pushed TE because she was cursing, Respondent replied, “No, because she was cursing as I was trying to get [ZJ] outside. They were both, you know, getting into the melee.” When asked to clarify what “getting into the melee” meant, Respondent stated that approximately “30 seconds or so” before pushing TE, she had attempted to get between him and ZJ to prevent him from removing her (Tr. 51-52, 56, 60, 63, 66, 102-06)

When confronted with statements he made at his official CCRB interview held on May 17, 2018, Respondent claimed he had no memory of making the statements, but admitted that his memory of the event would have been better at the time of the interview and that he had told the truth at the interview. Based on Respondent’s limited memory on the day of trial, the Tribunal admitted the audio and corresponding transcript of Respondent’s official CCRB interview into evidence (Ct. Exs. 1A & 1B; Tr. 42-45, 107-11, 144-45, 153).

At the interview, Respondent read the following entry from his activity log into the record:

1725 at CPO, [] Defendant [ZJ], date of birth [], residing at [], doubled up with [TE], defendant, DOB [] at the West 125th Street station, 127th Street exit and remained unlawfully therein without permission or authority. When defendant was asked to leave the station, she became irate and begin cursing and screaming relentlessly at AO creating public alarm and annoyance. AO attempted to escort defendant out of the station, at which point defendant violently fled her arms to prevent ejection from the station. AO did place defendant in handcuffs and charged defendant with disorderly conduct.

Respondent further stated that he prepared a juvenile report. When asked to describe what he had observed from memory, Respondent stated that he was standing by a staircase, approximately ten feet from the turnstiles when he observed ZJ and a "male" double up to go through a turnstile. Respondent stated that he then approached ZJ and TE. He informed "them" that he had observed "them" doubling up. Respondent stated that he believed that his partner, Police Officer Romero, approached and interacted with the "male." Respondent remembered that Police Officer Romero called to request backup because a crowd was gathering in response to ZJ's loud and physical protestations. Respondent described the "male" as "really nice and cooperative, so nothing happened to him." Respondent denied that he had any interactions with anyone else when he was removing ZJ from the station and denied pushing anyone. After viewing the video at his interview, Respondent stated that he had no independent recollection of why he pushed the "two females." (Ct. Ex. 1A, at 5-12, 19-20, 28, 32)

Findings

The sole specification in this matter charges Respondent with pushing TE. From the video evidence, it is clear that Respondent pushed TE. The only remaining question is whether this use of force was excessive under the circumstances. Patrol Guide Section 221-01 defines excessive force as "greater than that which a reasonable officer, in the same situation, would use under the circumstances that existed and were known to the MOS at the time the force was used." In determining whether a use of force is reasonable, Patrol Guide 221-01 further instructs members of the service to consider the severity of the crime, the immediacy of the perceived threat, and the age, size and condition of the subject.

Here, the reasonableness factors, common to use of force inquiries, do not justify Respondent's push of TE. The severity of the crime, if any, was minor. TE was 16 years old at the time, and, as apparent in the video evidence, was substantially smaller in size than Respondent. No credible safety concerns were raised by Respondent. To the contrary, Respondent testified that he was not concerned for his safety when he stopped the group of teenagers (Tr. 51). While Respondent's testimony concerning the combative behavior of ZJ was corroborated by the video evidence, in which she is depicted as uncontrollably argumentative (even after efforts made by her mother, TE and **Person A** to calm her), Respondent's testimony at the end of trial that TE was combative as well was not supported by the video evidence, in which TE is depicted as well-intentioned and reasonably calm under the circumstances. Respondent's testimony prior to his end-of-trial statements, however, was consistent with those at his Department interview, wherein he admitted that he had a limited memory of his interactions with TE and had no recollection of why he pushed her. Accordingly, the Tribunal does not credit Respondent's statements at trial as to TE's aggressive behavior prior to the push, as it was inconsistent with the record evidence.

While the force employed was slight and unlikely to cause injury, the video evidence depicts a use of force that, while minor, is sufficiently gratuitous and unconnected to a legitimate law enforcement purpose to qualify as excessive force. In the two seconds prior to the push, TE appears to be calmly exiting the station. At the moment the push is deployed, TE does not appear to be engaging in any activity that would justify any use of force. After the push is deployed, TE continues to respond in a calm manner and can even be observed holding back a male who is attempting to move towards the officers.

Accordingly, the Tribunal finds that the preponderance of the credible evidence establishes that Respondent's push of TE was unreasonable and excessive under the circumstances. I, therefore, find Respondent Guilty of the sole specification in *Disciplinary Case No. 2019-20143*.

PENALTY

In order to determine an appropriate penalty, the Tribunal, guided by the Department Disciplinary System Penalty Guidelines ("Disciplinary Guidelines"), considered all relevant facts and circumstances, including any aggravating and mitigating factors established in the record evidence. Respondent's employment record was also examined (*see* 38 RCNY § 15-07). Information from Respondent's personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

CCRB, at trial, recommended the imposition of a penalty consisting of the forfeiture of 25 vacation days and the imposition of one-year Dismissal Probation, arguing that Respondent had used force upon TE for an "inappropriate purpose or motivation, such as . . . to punish, retaliate, coerce and harass" and because "the officer's disciplinary history demonstrates [that] he is not an asset to the force, nor does he desire to be," referencing what CCRB characterized as a history of low evaluations. I find CCRB's recommended penalty to be excessive. CCRB did not present sufficient evidence that Respondent *intended* to "punish, retaliate, coerce and harass" TE. Such a finding would require evidence of a more serious nature than the light push at issue here. Furthermore, the record evidence established that rather than possessing some nefarious purpose, Respondent was, instead, attempting to exercise his discretion to issue a verbal warning and release to a group of teenagers, at least one of whom had committed a crime. Finally, I find no merit in CCRB's argument that Respondent does not desire to be an asset to force. To the

contrary, all of Respondent's evaluations reviewed by the Tribunal rate him as "Competent" to "Highly Competent."

The Disciplinary Guidelines establish a presumptive penalty of the loss of ten (10) vacation days for an act of non-deadly force with no injuries, with a mitigated penalty of five vacation days and an aggravated penalty of Termination. Ordinarily, a push as minimal and brief as this one would qualify as mitigating and, therefore, warrant the imposition of the five day mitigated penalty. Here, however, I find that the presumptive penalty of the forfeiture of ten (10) vacation days is more appropriate given the consequences that ensued from Respondent's actions, coupled with Respondent's prior disciplinary record. Respondent's push of TE, a minor, served as a catalyst to significantly escalate the encounter, causing ZJ to erupt again, which, in turn, caused a crowd of bystanders to form, and, in the end, resulted in the response of over a dozen officers. Furthermore, while Respondent's prior disciplinary history does not meet the requirements under the Disciplinary Guidelines for the imposition of progressive discipline, it further counsels against the application of a mitigated penalty.

Accordingly, I recommend a penalty of the loss of ten (10) vacation days.

Respectfully submitted,

Josh Kleiman
Josh Kleiman

Assistant Deputy Commissioner Trials

APPROVED
JUL 19 2021
[Signature]
DEPUTY CHIEF
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER RULX NOEL
TAX REGISTRY NO. 940116
DISCIPLINARY CASE NO. 2019-20143

Respondent was appointed to the Department on January 31, 2006. On his last three annual performance evaluations, he received 3.0 overall ratings of "Competent" for 2014, 2015 and 2016.

In 2012, Respondent pled Guilty to misconduct that was the subject of two disciplinary cases and forfeited 32 pre-trial suspension days without pay, two (2) vacation days, and agreed to cooperate with counseling. In the first matter, Respondent failed to immediately notify the Department after learning that his Department parking permit had been duplicated and that an individual was arrested for possession of the duplicate permit. In the second matter, Respondent (i) engaged in a physical altercation with his spouse, (ii) threw her cell phone to the ground causing it to be damaged, and (iii) failed to request the response of the Patrol Supervisor after said incident.

For your consideration.

Josh Kleiman
Josh Kleiman

Assistant Deputy Commissioner Trial ■